

**TOWN COUNCIL MEETING  
COUNCIL CHAMBERS**

**APPROVED  
SEPTEMBER 28, 2015**

1. Call to Order

Chairperson Thomson called the meeting to order at 7:01 p.m.

2. Introductory

Chairperson Thomson read the introductory.

3. Pledge of Allegiance

Chairperson Thomson led those present in the Pledge of Allegiance.

4. Roll Call

Answering the roll were Chairperson Thomson, Vice Chairperson Russell White, Councilors Frank Dennett, Charles Denault, Jeffrey Pelletier and Judy Spiller.

5. Agenda Amendment and Adoption

Councilor Denault moved to strike item 13(h) from the agenda.

6. Town Manager's Report – None.

7. Acceptance of previous minutes – 9/14/2015

The minutes of 9/14/2015 were accepted as amended.

8. Interviews for the Board of Appeals and Planning Board – None.

9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials – None.

10. PUBLIC HEARINGS

(090215-1) The Kittery Town Council moves to hold a public hearing on proposed amendments to Title 16 of the Kittery Town Code as listed below:

**Item 1:** The Kittery Town Council hereby ordains amendments to sections 16.7.8, 16.2.2, 16.3 and 16.8.11.5 of the Kittery Town Code.

**TOWN COUNCIL MEETING  
COUNCIL CHAMBERS**

**APPROVED  
SEPTEMBER 28, 2015**

- 16.7.8 Land Not Suitable for Development
- 16.2.2 definitions
- 16.3 Land Use Regulations
- 16.8.11.5 Application Procedures

**Item 2:** The Kittery Town Council hereby ordains amendments to section 16.8.7 of the Kittery Town Code.

- 16.8.7 Sewage Disposal

**Item 3:** The Kittery Town Council hereby ordains amendments to section 16.8.16.3 of the Kittery Town Code.

- 16.8.16.3 Lots

**Item 4:** The Kittery Town Council hereby ordains amendments to section 16.9.1.4 of the Kittery Town Code.

- 16.9.1.4 Soil Suitability

**Item 5:** The Kittery Town Council hereby ordains amendments to sections 16.4.4.1, 16.10.3.7, 16.10.3.8, 16.10.8.2.2 and 16.10.9.1.1 of the Kittery Town Code.

- 16.4.4.1 Inspection of Required Improvements
- 16.10.3.7 Independent Review/Inspection Review
- 16.10.3.8 Independent Review Applicant Funding
- 16.10.8.2.2 Performance Guaranty Conditions
- 16.10.9.1.1 Approved Final Subdivision Plan

**Item 6:** The Kittery Town Council hereby ordains amendments to section 16.7.3.5.6 of the Kittery Town Code.

- 16.7.3.5.6 Nonconforming Structure Reconstruction

**Item 7:** The Kittery Town Council hereby ordains amendments to section 16.5.2.4 of the Kittery Town Code.

- 16.5.2.4 Permit Period

**Item 8:** The Kittery Town Council hereby ordains amendments to section 16.9.1.3 of the Kittery Town Code.

- 16.9.1.3 Prevention of Erosion

Chris DiMatteo, Town Planner, approached the podium and gave a brief description of each of the items.

**TOWN COUNCIL MEETING  
COUNCIL CHAMBERS**

**APPROVED  
SEPTEMBER 28, 2015**

Chairperson Thomson opened the public hearing.

Agnes Charlesworth approached the podium to discuss Item 6. She noted that her family has a seasonal cottage on Gerrish Island since 1958 that is built on cinderblocks and is in danger of collapsing. She stated that they would need to pour a new foundation in order to correctly fix the problem but the rules do not allow you to pour a new foundation. She added they have paid a lot of taxes to the Town over the years and would like to be able to repair their cottage and save it from collapse.

John Watts, a business owner in Kittery approached the podium to discuss various items. He asked why the soil suitability reference was not just deleted instead of writing a whole new ordinance. Mr. DiMatteo responded that it made sense for them to rewrite it so they could work on related code amendments and connect different pieces. Mr. Watts asked how much soil is required to install a septic system. Mr. DiMatteo and Ms. Kalmar responded that in the Shoreland Zone, the current requirement is 15 inches and it will increase to 21 inches and outside of that zone the current requirement is 9 inches which will increase to 15 inches. Mr. Watts asked who the soil scientists were and Mr. DiMatteo responded that they attended the workshop in December of 2013 and they were a mixture of land development professionals. Mr. Watts asked why they were requiring 15 inches outside the Shoreland, commenting that there is technology out there which can protect the environment in less depth and the stringent rules restrict development. Ms. Kalmar responded that those systems are more expensive than standard septic systems so they decided to recommend deeper soil depths so it was less expensive for people to install. She added that if you are replacing an existing system and cannot meet the increase depth requirement then you can use the State's standards. Ms. Kalmar commented that the pretreatment only prevents nitrogen and phosphorus and the deeper soil prevents more chemicals. Mr. Watts noted that he disagrees with the changes which will make projects take longer and cost more than they should.

Chairperson Thomson closed the public hearing.

**CHAIRPERSON THOMSON MOVED TO ORDAIN AMENDMENTS TO SECTIONS 16.7.8, 16.2.2, 16.3 AND 16.8.11.5 OF THE KITTELY TOWN CODE. COUNCILOR SPILLER SECONDED THE MOTION.**

Councilor Dennett suggested that Item 1 is not in order for enactment because it does not have an enactment clause attached, which is part of the enactment procedure. Mr. Denault asked for clarification on which items Ms. Charlesworth and Mr. Watts were speaking to during their comments. Chairperson Thomson suggested that they note that they are acting on Title 16, with the notation for each item and who makes the motion and seconds it. Mr. DiMatteo responded that they have moved past requiring that, according to the Town Manager, and that the document

**TOWN COUNCIL MEETING  
COUNCIL CHAMBERS**

**APPROVED  
SEPTEMBER 28, 2015**

is just to record a resolution of adoption, which is done by the meeting minutes. Councilor Spiller stated that she did not support delaying the action just because they did not have a form that has not been used recently. Chairperson Thomson noted that they passed a tax rate ordinance last meeting without the enactment document and agreed with Councilor Spiller that the document is not necessary.

**A ROLL CALL WAS TAKEN. MOTION CARRIED: 5-1 WITH COUNCILOR DENAULT IN OPPOSITION.**

**CHAIRPERSON THOMSON MOVED TO ORDAIN AMENDMENTS TO SECTION 16.8.7 OF THE KITTELY TOWN CODE. COUNCILOR SPILLER SECONDED THE MOTION.**

Councilor Dennett noted that he was not aware that the Town had a Wastewater Treatment Department. Mr. DiMatteo responded that it is what the Department refers to it as. Mr. Dennett commented that there were two separate definitions of wastewater to which Mr. DiMatteo responded that they used the State definition of wastewater but if the Council is not comfortable with it then they can strike it. Mr. Dennett noted two sections which refer to a new dwelling connecting to town sewer, one noting the property line "as measured by public way". He commented that in certain circumstances this would require someone to go through someone else's property. Mr. DiMatteo stated that they were reiterating what is obligated under Title 13. Mr. Dennett commented that he has no objections if they make changes with the input from the Superintendent of Sewer.

**CHAIRPERSON THOMSON MOVED TO POSTPONE THE MOTION TO ORDAIN AMENDMENTS TO SECTION 16.8.7 OF THE KITTELY TOWN CODE UNTIL THE NEXT MEETING ON OCTOBER 14, 2015. COUNCILOR DENAULT SECONDED THE MOTION.**

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

**CHAIRPERSON THOMSON MOVED TO ORDAIN AMENDMENTS TO SECTION 16.8.16.3 OF THE KITTELY TOWN CODE. VICE CHAIRPERSON WHITE SECONDED THE MOTION.**

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

**CHAIRPERSON THOMSON MOVED TO ORDAIN AMENDMENTS TO SECTION 16.9.1.4 OF THE KITTELY TOWN CODE. COUNCILOR SPILLER SECONDED THE MOTION.**

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

**CHAIRPERSON THOMSON MOVED TO ORDAIN AMENDMENTS TO SECTIONS 16.4.4.1, 16.10.3.7, 16.10.3.8, 16.10.8.2.2 AND 16.10.9.1.1 OF THE KITTELY TOWN CODE. COUNCILOR SPILLER SECONDED THE MOTION.**

Councilor Dennett noted that there were discrepancies and grammatical errors and asked why both the Planner and the CEO had be in concert. Mr. DiMatteo responded that it gave the CEO the ability to provide inspection possibilities from a peer review or consultant on smaller projects that might not be a Planning Board issue. He noted that a lot of projects are jointly reviewed by both the Town Planner and the CEO. Councilor Dennett commented that it seems like a redundancy in people doing the same job and noted that they left out numeral 1 out on line 160 after the word "one". Chairperson Thomson asked Mr. DiMatteo if he approved the Council to add the number 1 in parenthesis on line 160 after the alpha one, which he did.

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

**CHAIRPERSON THOMSON MOVED TO ORDAIN AMENDMENTS TO SECTION 16.7.3.5.6 OF THE KITTELY TOWN CODE. COUNCILOR SPILLER SECONDED THE MOTION.**

Mr. DiMatteo noted that they had presented the Council with a new Item 6 as it became clear that morning that the format was not clear so they put it in the correct order. Councilor Dennett asked why it had become clear that morning and Mr. DiMatteo responded that it was because Councilor Dennett had complained. Councilor Dennett noted a disparity on lines 52 and 59 to 60 with reference to demolition. Mr. DiMatteo noted that there was no reason for the difference in the wording and that they were using what was already in the code. Councilor Dennett stated that changes in wording open it up for legal interpretation by the courts. Chairperson Thomson asked for unanimous consent to delete the sentence on line 59 to 60, which was approved. Councilor Dennett commented that they are getting rid of that sentence and bringing down line 52 to replace it.

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

**CHAIRPERSON THOMSON MOVED TO ORDAIN AMENDMENTS TO SECTION 16.5.2.4 OF THE KITTELY TOWN CODE. COUNCILOR DENAULT SECONDED THE MOTION.**

**TOWN COUNCIL MEETING  
COUNCIL CHAMBERS**

**APPROVED  
SEPTEMBER 28, 2015**

Councilor Dennett commented that nothing in the code or the fee schedule mentioned a base application fee except one example that was provided. Mr. DiMatteo noted that they should amend Appendix A, which can happen outside of Title 16, and that there are other changes in the fee schedule that they need to update so they will bring that forward after the Town Manager reviews it.

**COUNCILOR DENNETT MOVED TO POSTPONE THE MOTION TO ORDAIN AMENDMENTS TO SECTION 16.5.2.4 OF THE KITTELY TOWN CODE UNTIL THE NEXT MEETING ON OCTOBER 14, 2015.**

Mr. DiMatteo noted that the code stands alone and is not connected to the fee schedule so there are no gross issues. Councilor Dennett responded that the code does not explain what the base application fee is and Mr. DiMatteo agreed.

**CHAIRPERSON THOMSON SECONDED COUNCILOR DENNETT'S MOTION TO POSTPONE.**

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

**CHAIRPERSON THOMSON MOVED TO ORDAIN AMENDMENTS TO SECTION 16.9.1.3 OF THE KITTELY TOWN CODE. CHAIRPERSON WHITE SECONDED THE MOTION.**

Councilor Dennett asked why they would limit contractors to removal of no more than 1 cubic yard without having passed some type of course from the State of Maine. He noted that the provision is already in effect in the Shoreland Zones by State law. Mr. DiMatteo responded that it is not enforceable because they have not adopted the State law and part of it is optional until the municipality adopts it. Councilor Dennett commented that it does not apply to municipal employees unless it is made an ordinance and they should wait to see what the State does.

**COUNCILOR DENNETT MOVED TO POSTPONE THE MOTION TO ORDAIN AMENDMENTS TO SECTION 16.9.1.3 OF THE KITTELY TOWN CODE UNTIL THE NEXT MEETING ON OCTOBER 14, 2015.**

Mr. DiMatteo noted that there were issues with properties in the Shoreland and it was discussed with Maine DEP that we need to enforce State statute but he conceded that it needs to be adopted by local ordinance. Councilor Dennett stated that he would like more research done.

**VICE CHAIRPERSON WHITE SECONDED COUNCILOR DENNETT'S MOTION TO POSTPONE.**

**A ROLL CALL WAS TAKEN. MOTION CARRIED 4-2 WITH COUNCILORS SPILLER AND PELLETIER IN OPPOSITION.**

**11. DISCUSSION**

- a. Discussion by members of the public

Page Mead, Co-Chair of the Parks Commission approached the podium to ask a question about Item 13(h). He was informed that it had been removed from the agenda.

Tom Hibsichman approached the podium to discuss an email sent to Nancy and Jeff regarding the Sacrifices of War bronze restoration in the John Paul Jones Park. He noted that the statue had been defaced in late 2014 and has not yet been cleaned.

Shannon Roberts approached the podium to discuss Item 13(g) regarding a request to put up a banner. She added that they would also like to put up 25 road side signs which is the same amount that was approved last year.

**12. UNFINISHED BUSINESS – None.**

**13. NEW BUSINESS**

- a. Donations/gifts received for Council disposition

(090215-2) The Kittery Town Council moves to accept a donation from York Hospital in the amount of \$9,250 to be deposited in account #5003-67500 for scholarships for the Recreation Department.

**COUNCILOR SPILLER MOVED TO ACCEPT THE DONATION FROM YORK HOSPITAL IN THE AMOUNT OF \$9,250.00 TO BE DESPOSITED IN ACCOUNT #5003-67500 FOR SCHOLARSHIPS FOR THE RECREATION DEPARTMENT. COUNCILOR PELLETIER SECONDED THE MOTION.**

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

b. (090215-3) The Kittery Town Council moves to authorize the release of funds in the amount of \$1,000 from unassigned surplus and to appropriate said funds to be paid out of Account #101740-68427 Expense Self-Insurance Claims, to pay the deductible associated with damage to a police cruiser.

**COUNCILOR SPILLER MOVED TO AUTHORIZE THE RELEASE OF FUNDS IN THE AMOUNT OF \$1,000 FROM UNASSIGNED SURPLUS AND TO APPROPRIATE SAID FUNDS TO BE PAID OUT OF ACCOUNT #101740-68427 EXPENSE SELF-INSURANCE CLAIMS, TO PAY THE DEDUCTIBLE ASSOCIATED WITH DAMAGE TO A POLICE CRUISER. VICE CHAIRPERSON WHITE SECONDED THE MOTION.**

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

c. (090215-4) The Kittery Town Council moves to establish the Holiday Parade as a town event, sponsored by the Kiwanis Club of the Seacoast, to be held on Saturday, December 5, 2015 at 3:00 p.m.

**COUNCILOR PELLETIER MOVED TO ESTABLISH THE HOLIDAY PARADE AS A TOWN EVENT, SPONSORED BY THE KIWANIS CLUB OF THE SEACOAST, TO BE HELD ON SATURDAY, DECEMBER 5, 2015 AT 3:00 P.M. CHAIRPERSON THOMSON SECONDED THE MOTION.**

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

d. (090215-5) The Kittery Town Council moves to approve a renewal application from Black Birch, Inc., 2 Government Street, Kittery for a Malt, Spirituous and Vinous Liquor License for The Black Birch, 2 Government Street.

**COUNCILOR SPILLER MOVED TO APPROVE A RENEWAL APPLICATION FROM BLACK BIRCH, INC., 2 GOVERNMENT STREET, KITTERY FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR THE BLACK BIRCH, 2 GOVERNMENT STREET. COUNCILOR PELLETIER SECONDED THE MOTION.**

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

e. (090215-6) The Kittery Town Council moves to approve the disbursement warrants.

**COUNCILOR PELLETIER MOVED TO APPROVE THE DISBURSEMENT WARRANTS IN THE AMOUNT OF \$497,067.76. CHAIRPERSON THOMSON SECONDED THE MOTION.**

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**



**TOWN COUNCIL MEETING  
COUNCIL CHAMBERS**

**APPROVED  
SEPTEMBER 28, 2015**

f. (090215-7) The Kittery Town Council moves to authorize a request from Fuel & More to hang a banner across Rogers Road from October 19th through November 8th for their annual event to raise funds for Kittery's Fuel & More Program.

**COUNCILOR PELLETIER MOVED TO AUTHORIZE A REQUEST FROM FUEL & MORE TO HANG A BANNER ACROSS ROGERS ROAD FROM OCTOBER 19TH THROUGH NOVEMBER 8TH FOR THEIR ANNUAL EVENT TO RAISE FUNDS FOR KITTERY'S FUEL & MORE PROGRAM. CHAIRPERSON THOMSON SECONDED THE MOTION.**

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

g. (090215-8) The Kittery Town Council moves to authorize a request from the Traip Academy Athletic Boosters to hang a banner across Rogers Road from November 9th through November 14th to promote their 7th Annual Craft Fair to raise funds for the Pamela Hoyt-Sanborn Memorial Scholarship Fund.

**COUNCILOR PELLETIER MOVED TO AUTHORIZE A REQUEST FROM THE TRAIPI ACADEMY ATHLETIC BOOSTERS TO HANG A BANNER ACROSS ROGERS ROAD FROM NOVEMBER 9TH THROUGH NOVEMBER 14TH TO PROMOTE THEIR 7TH ANNUAL CRAFT FAIR TO RAISE FUNDS FOR THE PAMELA HOYT-SANBORN MEMORIAL SCHOLARSHIP FUND. VICE CHAIRPERSON WHITE SECONDED THE MOTION.**

**A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION CARRIED: 6-0.**

**14. COUNCILOR ISSUES OR COMMENT**

Councilor Denault commented that Police Chief Theodor Short has no intention to renew his contract and added that he did not want to lose him as Chief. He recommended holding an executive session with the Chief to see why he is leaving and explore keeping him as full time without a contract. Councilor Denault then announced the following names of those who had passed:

Harry Hannigan  
Harry Bullard  
Ronald Hyson  
Caroline Durand  
Ion Denny

**TOWN COUNCIL MEETING  
COUNCIL CHAMBERS**

**APPROVED  
SEPTEMBER 28, 2015**

Councilor Spiller noted that the Town Manager hired the Chief, not the Council. Chairperson Thomson commented that the manager communicated that the Chief was not interested in renewing his contract beyond 6/30 and added that he might just want to retire. He stated that the Town Manager is developing a plan over the next few months to hire a new chief and they should let her take care of it. Councilor Denault responded that he would like to have an exit interview with him and Chairperson Thomson noted that the charter would not allow them to do such a thing.

Chairperson Thomson commented that there is no workshop next Monday night with the Planning Board but they do have a workshop with the KPA on October 14<sup>th</sup> at 6:00 p.m. He noted that the next meeting is on a Wednesday because of the Monday holiday. He added that he would like to get more info from the KPA as to what they would like to discuss. Chairperson Thomson stated that the lecture series began again at the KCC in the Star Theater in September, adding that there would be a three part series in October (7<sup>th</sup>, 14<sup>th</sup>, 21<sup>st</sup>) presented by James Lawson on how the service men and women of Kittery helped win World War II. He noted that the School Department is working on a candidate's night for Council and School Committee on October 28<sup>th</sup>.

15. COMMITTEE AND OTHER REPORTS – None.

16. EXECUTIVE SESSION – None.

17. ADJOURNMENT

**COUNCILOR PELLETIER MOVED TO ADJOURN, SECONDED BY  
CHAIRPERSON THOMSON WITH ALL IN FAVOR. MEETING ADJOURNED AT  
8:22 P.M.**